

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF ST. PAUL

In the Matter of the License Application of
Cameroon Group LLC d/b/a Smith
Avenue Rental Hall

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on for before Administrative Law Judge , acting as a hearing officer for the City of St. Paul on May 10, 1996 at 1504 City Hall Annex, 25 West Fourth Street, St. Paul, Minnesota, and on May 24, 1996 in Room 41, Ramsey County Courthouse, 15 West Kellogg Boulevard, St. Paul, Minnesota.

Virginia D. Palmer, Assistant City Attorney, Civil Division, 400 City Hall, 15 West Kellogg Boulevard, St. Paul, MN 55102, appeared on behalf of City of St. Paul. Albert Isiaka Usumanu, Attorney at Law, 4018 West 65th Street, Suite 111, Edina, MN 55435 appeared on behalf of Cameroon Group LLC d/b/a Smith Avenue Rental Hall and Gregory Langason, its Manager and shareholder.

The record of this proceeding closed on June 17, 1996, the last day for the receipt of reply briefs.

This report is a recommendation, not a final recommendation. The St. Paul City Council will make the final decision after a review of the record, which may accept, reject or modify the Findings, Conclusions and Recommendations contained herein. Pursuant to 310.05 (c-1) of the St. Paul Legislative Code, after receipt of this report, the St. Paul City Council will provide an opportunity to present oral or written arguments alleging error in this report and to present argument related to any recommended adverse action.

STATEMENT OF ISSUES

The issues in this proceeding are two-fold:

1. Whether the Applicant violated the conditions of his provisional license to operate a dance/rental hall at 926 South Smith Street in St. Paul, Minnesota by failing to comply with any of the conditions set forth in the resolution granting a provisional license; and, if so, whether the City Council can take adverse action as set forth in section 310.06 (a) and (b).

2. Whether the Applicant has maintained or permitted conditions in the operation of the dance/rental hall business at 926 South Smith Street in St. Paul, Minnesota such that it unreasonably annoyed, injured or endangered the safety, health, morals, comfort or repose of any considerable number of members of the public in violation of St. Paul Legislative Codes Section 310.06 (b) (8); and if so, the appropriate sanction to be imposed for the violations established.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Gregory Langason is a permanent resident alien and a native of Cameroon, Africa. He resides at 4515 Fourth Avenue South, Minneapolis, Minnesota. Mr. Langason is manager and shareholder of Cameroon Group LLC, d/b/a Smith Avenue Rental Hall. Mr. Langason (hereinafter "Applicant") has been renting the Smith Avenue Rental Hall (hereinafter "the Rental Hall") for approximately two years. Prior to that he was a client renting halls from others.

2. The Applicant rents out the Rental Hall for fund-raisers, weddings, religious meetings and private parties. He enters into written contracts with clients or groups wishing to rent the premises for such events.

3. In July of 1995, the City of St. Paul adopted a new ordinance which regulated, for the first time, dance and rental halls. On July 26, 1995, the City Council adopted Section 405 of the St. Paul Legislative Code relating to dance or rental halls. It provided that no person shall operate a public dance or rental hall in St. Paul without a license.

4. In October of 1995, the St. Paul Office of License, Inspections and Environmental Protection (hereinafter "LIEP") notified the Applicant of the Ordinance now requiring licensure of dance/rental halls. On or about October 16, 1995, Applicant submitted to LIEP a license application for a Class III dance/rental hall pursuant to Section 405 of the St. Paul Legislative Code. The application completed by Mr. Langason provided all the necessary information for consideration by the City Council.

5. Information provided on the license application indicated that the Applicant Gregory Langason, would operate the business personally.

6. A public hearing before the St. Paul City Council concerning the application was originally scheduled for November 22, 1995. The office of LIEP mailed notices of the public hearing to the Applicant and interested members of the public on October 31, 1995.

7. Prior to the license application, there had been a number of complaints filed with police and the Mayor's office concerning noise, litter, parking and after-hours drinking at the Rental Hall. As a result of these complaints, the Director of the Office of LIEP prepared a number of license conditions which were presented to Applicant. Applicant was advised that violation of any of the restrictions could be grounds for adverse action against the license of the establishment. Upon signature of the license conditions, Applicant was permitted to continue operating the Rental Hall pending St.

Paul City Council's approval or disapproval of the license application. Mr. Langason agreed to the license conditions by signature dated December 4, 1995.

8. The license conditions for the Rental Hall provide:

1. The Hall must be closed by 12:00, midnight, and all patrons, guests and members of the public shall NOT be on the licensed premises, after the 12:00 midnight, closing.
2. The management of the Hall shall be responsible for making sure that patrons, guests, and members of the public exiting the Hall do so in a quiet and orderly fashion so as not [to] disturb the adjacent neighbors.
3. The management of the Hall shall provide a telephonic means to contact both the owner of the hall and the on site manager at all times that the hall is being used. The numbers for contact are: On site hall manager; 298-1411 and owner, Mr. Greg Langason, digital beeper; 643-5468.
4. There shall be no parking in the alley south of the building, by anyone associated with the hall. In addition the City will also enforce the no parking ban for residents as well.
5. The management of the hall shall be responsible for the clean up of the outside area immediately adjacent to the hall.
6. There shall be no sale of liquor or beer to anyone on the premises at any time. The City will consider the collection of an entry fee or admission charge or donation as a sale of liquor or beer, if such a fee is charged or collected when alcohol is being served or consumed on the premises.
7. There shall be no sale or consumption of liquor or beer on the part of minors (anyone under the age of 21 years).
8. No alcoholic beverages including beer, spirits, or wine, shall be allowed to leave the establishment.
9. The owner or manager of the hall shall provide a list of all rentals on a weekly basis to both the Office of LIEP and the Central Team commander of the Saint Paul Police Department.

**VIOLATIONS OF ANY OF THESE RESTRICTIONS COULD BE
GROUNDS FOR ADVERSE ACTION AGAINST THE LICENSE OF
THE ESTABLISHMENT.**

9. Consideration of the Applicant's application for a dance or rental hall license by the St. Paul City Council was rescheduled to January 31, 1996. The Applicant and interested members of the public were notified of the cancellation of the November 22, 1995 hearing on November 8, 1995. A Notice of the rescheduled hearing before the St. Paul City Council was mailed to the Applicant and interested members of the public on January 4, 1996. (City Exhibit 7).

10. On December 29, 1995, Sergeant Daniel Anderson of the St. Paul Police Department received information that the Rental Hall was rented for a New Year's Eve's party. He was also provided with a copy of the license conditions for the Rental Hall. On December 31, 1995 at approximately 9:00 p.m., Sergeant Anderson stopped at the Rental Hall. He observed 40 to 50 people attending a party. A \$15.00 admission fee was being charged to people entering the Rental Hall. People paying this admission were then given a red ticket. The red ticket entitled them to get alcoholic beverages all evening for no extra charge. (City Exhibit 2).

11. Sergeant Anderson spoke with the site manager, Diana Young who then showed Sergeant Anderson a rental contract which stated that alcoholic beverages could not be sold, but could be served at the Rental Hall. The person in charge of the party and who had signed the rental agreement, and Ms. Young were told by Sergeant Anderson that he would not shut down the party, but would prepare a report and submit it to the Office of LIEP. Sergeant Anderson also advised the site manager that if the police were called to the Rental Hall for any fights, noise complaints, or other illegal activity, the party would be immediately shut down. There were no police calls to that address for the entire evening. (City Exhibit 2).

12. Sergeant Anderson prepared a general report of the December 31, 1995 incident and sent a copy to the Office of LIEP.

13. On the same New Year's Eve evening of December 31, 1995, Senior License Inspector from the office of LIEP, Kristina Schwenler went to the Smith Avenue Rental Hall at approximately midnight. She observed a party going on "full blast". It appeared to Ms. Schwenler that a cover charge was being charged at the door and a full bar was in operation. She informed security that one of the conditions for the Rental Hall was that parties be closed by midnight.

14. Ms. Schwenler contacted Mr. Langason informing him of her view that he had violated several license conditions. Specifically, the conditions requiring that the Rental Hall be closed by 12:00 midnight, and that there be no sale of alcoholic beverages. Ms. Schwenler advised the Applicant to be more aggressive in enforcing these conditions.

15. On January 31, 1996, the public hearing on Applicant's license was heard by the St. Paul City Council. Mr. Langason was in attendance as were a number of neighbors and representatives of neighborhood organizations who objected to approval of the license application.

16. Based on the public hearing and the record received by the City Council on January 31, 1996, the City Council on its own initiative found that there was a rational basis to refer the matter to an Administrative Law Judge for consideration of adverse action concerning the license application. The City Council further resolved that during the period of time prior to the final decision by the City Council regarding the license, the Applicant would be allowed to continue operation under specified conditions. (City Exhibit 3). In a resolution dated January 31, 1996, the City Council adopted most of the license conditions previously imposed by the office of LIEP with a few amendments. Most notably, the Applicant was responsible for ensuring that one or more security persons are on duty at all functions that take place at the Rental Hall. In addition, the

City Council required Mr. Langason to provide a copy of the conditions to all parties renting the Rental Hall and to post a copy in a place visible to all patrons, guests and members of the public. Furthermore, Gregory Langason was named as the person responsible for complying with the specified conditions.

17. On January 31, 1996, the Applicant agreed to these conditions in order to continue to operate the Rental Hall. City Council resolved, and Applicant acknowledged "that any violation of the conditions could be grounds for adverse action, including suspension and revocation of the license." The resolution was approved by the Mayor on February 6, 1996. (City Exhibit 3).

18. On March 2, 1996, two St. Paul police officers were instructed by Police Sergeant Coyle to investigate a report of a party at the Smith Avenue Rental Hall. A complaint had been made to City Councilman Dave Thune by a constituent suggesting that people attending the party were charged a cover charge and permitted to drink all the beer they could. (City Exhibit 4 and 6).

19. Sergeant Coyle instructed Officers Axtell and Bandemer to enter the Rental Hall in plain clothes and attempt to pay a cover charge and procure alcohol at the premises. At approximately 9:30 p.m., the two officers entered the Rental Hall. At the interior door, a man in his early 20's, upon seeing the two men, said, "Five dollars a piece." Officer Axtell stated, "What's that cover". The man replied, "All the beer you can drink." Officer Axtell gave the man a \$20 bill and the man gave him back two five dollar bills change for Officer Axtell and the second officer, Officer Bandemer. The man then stamped both Police Officers hands which read "Paid" in red. The two officers then went into the bar area where the two officers were served two tap beers at no additional cost. A short time later, the officers returned to the bar area and each ordered another beer. They were not charged for the second beers as well. The police officers did not see the bartender accept any money for alcohol being served other than what was put in a "tip jar". (City Exhibit 4 and 5).

20. Officers Bandemer and Axtell advised Sergeant Coyle of their findings and at approximately 10:15 p.m. St. Paul Police Sergeant LaBossiere and Officer Schwartz went to the Rental Hall arriving at approximately 10:40 p.m. Upon entering the Rental Hall, the officers spoke with the doorman and the bartender, obtained their names and dates of birth, and determined that the band playing at the party was making a compact disc for Castilla Productions. The crowd was described by the police officers as "orderly". A copy of Sergeant LaBossiere's police report dated March 2, 1996 was provided to vice investigations and to the office of LIEP.

21. Cary Kimmel lives on West Baker Street which is around the corner and south of the entrance to the Rental Hall. His property adjoins the rear of the Rental Hall. Mr. Kimmel has lived in the neighborhood since 1987. Mr. Kimmel has documented problems that he has observed at the Rental Hall for approximately two years. He has documented loud noises, honking horns, screeching brakes, empty beer cans and champagne bottles outside of the Rental Hall, evidence of urinating in the snow, and parties continuing after 12:00 midnight. Many of these activities occurred prior to the current license application and licensing conditions placed upon the Applicant.

22. Mr. Kimmel observed a poster in the window of the El Borrito Market advertising a dance at the Smith Avenue Rental Hall on February 3, 1996. The poster indicated an admission price of \$15.00 in advance and \$20.00 at the door. The poster also indicated that the event would start at 7:00 p.m. and last until 12:30 a.m. (City Exhibit 11).

23. Mr. Kimmel began monitoring his observations of the event on February 3, 1996. (City Exhibit 12). During the period from approximately 10:30 p.m. until 1:28 a.m., Mr. Kimmel documented honking horns, loud voices, screeching tires, the sound of a loud shot or firecracker, the presence of two police squad cars, and evidence of the event continuing past the 12:00 midnight hour. At approximately 1:47 a.m., Mr. Kimmel toured the area in his car and observed beer cans in the gutter and snow bank and cars still parked in front of the Rental Hall. (City Exhibit 12).

24. On the evening of February 3, 1996, there was a police call made complaining of disorderly conduct at approximately 11:00 p.m. A police squad was dispatched to that location at approximately 12:10 to 12:30 a.m.

25. The neighborhood around the Rental Hall is described as a quiet commercial and residential neighborhood. The commercial establishments include a bank, an insurance agency, a cafe, a printing business, a hair salon which all are located on Smith Avenue. The side streets adjacent to Smith Avenue are primarily residential.

26. The West Side Safe Neighborhood Council (hereinafter the "Council") is a neighborhood association made up of area residents and business owners. The Council is devoted to crime prevention, violence prevention, safe neighborhoods and educational efforts. The Council sponsors neighborhood events. The West Side Safe Neighborhood Council was formerly the Riverview Safe Neighborhood Association and has been in existence since September of 1992.

27. On January 25, 1996, John Neess, the chairperson of the Council's board wrote a letter to St. Paul City Council President, Dave Thune stating that the Board of Directors "believes it would not be in the best interest of the community to grant a dance or rental hall license to the owner of the Smith Avenue Rental Hall." (City Exhibit 3). Mr. Neess indicated that neighborhood residents would be attending the hearing concerning the license application on January 31, 1996.

28. On February 27, 1996, the Council held a public hearing at the Cherokee Bank on the west side in St. Paul at which 19 people attended. Mr. Langason was also in attendance at that meeting. The Council board heard comments from attendees which were described as mostly "unfavorable" and opposed to the grant of a license application to the Applicant.

29. Tom Oestreich is the pastor for Harvest Fellowship located at 840 Ohio Street in St. Paul. Pastor Oestreich has rented the Rental Hall for worship and church services. He serves no alcoholic beverages. The Harvest Fellowship would like to continue to have the opportunity to rent the premises for these purposes.

30. The Applicant concedes that there have been problems in the past primarily due to the consumption of alcohol by party goers. It is the Applicant's intent to make the

Rental Hall an alcohol free establishment beginning in 1997. The Applicant believes he must honor the contracts that he has already entered into for 1996. Mr. Langason indicates that he has made good faith attempts to have those renting the facility to abide by the conditions which he has voluntarily agreed to.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The St. Paul City Council and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. § 14.55 (1994) and § 310.05(c-1) of the St. Paul Legislative Code.

2. Section 310.05(c) permits the Administrative Law Judge to hear "other interested persons" and give them the opportunity to present testimony or otherwise participate in the hearing, whether or not they have been granted the status of intervenor.

3. The Notice of Hearing was proper in form and was validly served.

4. The Applicant, Gregory Langason, has demonstrated that he is of good moral character and has met the minimum qualifications for issuance of a Class III license for a public dance or rental hall in the city of St. Paul.

5. The Applicant, having operated a dance/rental hall prior to the passage of the ordinance now requiring licensure is not a new applicant for licensure. The St. Paul City Council acted properly by allowing the Applicant to continue operating the Rental Hall pending consideration of its license application, and it acted properly when it placed conditions upon its continued operation.

6. The City Council may consider adverse action, including the revocation or suspension of the Applicant's license, the imposition of additional conditions upon that license and the imposition of fines and costs consistent with St. Paul Legislative Code § 310.05.

7. The conditions placed upon the continued operation of the Applicant's rental hall license are reasonable and were voluntarily agreed to by the Applicant.

8. On December 31, 1995, the Applicant violated a license condition which prohibited the sale of liquor or beer to anyone on the premises at any time. The collection of an entry fee or admission charge or donation is deemed to be a sale of liquor or beer as specified in the license conditions agreed to by the Applicant on December 4, 1995.

9. On December 31, 1995, the Applicant violated the license condition that the Rental Hall must be closed by Midnight.

10. On February 3, 1996, the Applicant violated the license condition that there be no sale of liquor or beer to anyone on the premises at any time. The collection of an entry fee or admission or donation is deemed to be a sale of liquor or beer if such a fee is charged or collected when alcohol is being served or consumed on the premises

consistent with the license condition agreed to by the Applicant on December 4, 1995, and on January 31, 1996.

11. On February 3, 1996, the Applicant violated the license condition that the rental hall be closed by 12:00 Midnight.

12. On March 2, 1996, the Applicant violated the license condition that there be no sale of liquor or beer to anyone on the premises at any time. It was proper to consider the collection of an entry fee or admission charge or donation as a sale of liquor or beer as such fee was charged or collected when alcohol was served or consumed on the premises as specified in the license condition agreed to by the Applicant on December 4, 1995, and on January 31, 1996.

13. On February 3, 1996, the Applicant violated the license condition to ensure that patrons, guests and members of the public exit the Rental Hall in a quiet and orderly fashion so as not to disturb the adjacent neighbors.

14. The renewal of the rental hall license to the Applicant at 627 Smith Avenue South in the City of St. Paul will not unreasonably annoy, injury or endanger the safety, health, morals, comfort, or repose of any considerable number of members of the public so long as the conditions as provided in the January 31, 1996 resolution of the City Council are continued and enforced.

15. As a consequence of Conclusions 8 through 13, it is appropriate to impose a license suspension of a moderate duration on the Applicant.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the St. Paul City Council suspend the dance/rental hall license of Cameroon Group LLC, d/b/a Smith Avenue Rental Hall managed by Gregory Langason at 627 Smith Avenue South, St. Paul, Minnesota, for a period of seven days for each violation, for a total of 42 calendar days.

Dated this 25th day of July, 1996.

PHYLLIS A. REHA
Administrative Law Judge

Reported: Taped

NOTICE

Under to Minn. Stat. § 14.62, subd. 1, the City Council is respectfully requested to provide a copy of its final decision to the Administrative Law Judge by first class mail.

MEMORANDUM

Normally, the burden of proof is upon an applicant for license to affirmatively establish that he meets the minimum qualifications for licensure. In this case, however, the Applicant had an ongoing business prior to the passage of the ordinance which required dance/rental hall licensure. Thus, this proceeding is more in the nature of an enforcement action proposing revocation or suspension of an existing license. Thus, the burden of proof is on the City to establish by a preponderance of the evidence that the licensee has violated conditions of his Rental Hall license and that revocation or suspension of the license is warranted.

There is no "grandfather clause" which permitted continued operation of rental halls which were in existence prior to the passage of the ordinance. However, in this case, the Applicant has a property interest in the issuance and renewal of a rental hall license. The Minnesota Supreme Court has held that persons seeking renewal of their liquor licenses do have "a reasonable expectation of the continuing receipt of the benefit conferred by a license" as a result of their investment and because the licenses are generally renewed "as a matter of course". Tamarac Inn, Inc. v. City of Long Lake, 310 N.W.2d 474, 477 (Minn. 1981). See also, Greater Duluth Coact v. City of Duluth, 701 F.Supp. 1452, 1456 (U.S. Dist. Ct. Minn. 1988).

In Tamarac, the Long Lake City Council refused to renew the license of the Tamarac Inn due to a new zoning law that had been adopted to prohibit liquor licenses in the area where the inn was located, and due to alleged liquor ordinance violations that were actually no more serious than those at other establishments. The Minnesota Supreme Court held that the City Council's action in denying the renewal was arbitrary and capricious. Tamarac, 310 N.W.2d at 478. In E.T.O., Inc., d/b/a "Fergie's Bar" v. Town of Marion, 375 N.W.2d 815, the Minnesota Supreme Court held that an applicant for a liquor license renewal was excluded from a statutory limitation prohibiting the sale of liquor within 1,500 feet of a school outside of the municipality, because the establishment had been in existence some 15 years prior to the legislative amendments. In Fergie's Bar case, businesses holding liquor licenses prior to the legislative amendment were protected under a grandfather clause from the 15 foot limitation. While there is no similar grandfather clause in the case at bar, the same rationale applies. In this case, the Applicant had a property interest in renewal of his license under the ordinance which now requires rental hall licensure.

The City alleges that the Applicant has violated several of the conditions of his provisional rental hall license and thus, denial (i.e. revocation) of the license is warranted. The City has met its burden of proof to establish that there have been violations of the reasonable conditions placed upon the continued operation of the Rental Hall. The testimony in evidence provided at the hearing

by police officers, city officials and neighbors provide eyewitness testimony that there were clear violations of the license conditions. Thus, the Administrative Law Judge has concluded that adverse action against the license of the Applicant is appropriate.

The Applicant agreed to the conditions developed by the Director of the Office of LIEP on December 4, 1995. The Applicant was on notice that those conditions must be adhered to and enforced. As the Findings and Conclusions of this Report reflect, license conditions were violated on December 31, 1995, February 3, 1996, and March 2, 1996. The St. Paul Legislative Code gives little guidance as to the specific sanctions which should be applied for violation of any license conditions. The courts have recognized the discretion allowed local officials in imposing sanctions. St. Paul Legislative Code, § 310.05(k) permits the City Council to impose upon any licensee or license applicant some or all of the costs of the contested hearing before an independent hearing examiner. Section 310.05(l) also permits the City Council to impose a fine upon any licensee or license applicant as an adverse license action. Such fine may be in such amount as the council deems reasonable and appropriate, having in mind the regulatory enforcement purposes. And finally, revocation, suspension, and other imposition of conditions is permitted by § 310.06.

In this case, the Applicant has failed to comply with conditions set forth in the provisional license and as set forth in the resolution granting that provisional license. Thus, any or all of the above sanctions may indeed be appropriate in this case.. Under the circumstances of this case, a seven-day suspension for each of the enumerated violations is seen by the Administrative Law Judge to be reasonable. The City Council may also want to consider imposing as an adverse action the costs of this contested case hearing. The seven-day suspension for each violation is based upon review by this Administrative Law Judge of previous adverse actions imposed upon on-sale liquor licensees. See e.g., In the Matter of Licenses held by VH & M, Inc., d/b/a Born's Dutch Bar for the Premises located at 899 Rice Street, (Docket No. 2-2101-8387-3) wherein the Administrative Law Judge recommended suspension of all of the St. Paul City licenses applicable to Born's Dutch Bar held by the corporation for a period of seven days for one incident. The Administrative Law Judge, in that case, took into consideration the fact that Mr. Born was not present in the bar at the time of the occurrence. A three-week suspension of the bar's license, as recommended by the City in that case, was determined by the Administrative Law Judge to be too severe under those circumstances.

Finally, the Administrative Law Judge believes that the City did not establish by a preponderance of the evidence that the Applicant has maintained a nuisance in violation of the St. Paul Legislative Code, § 310.06(b)(8). It was not shown that the Applicant has permitted conditions that unreasonably annoy, injure or endanger the safety, health, morals, comfort or repose of any considerable number of members of the public.

P.A.R.